

Vakoc, Misha

From: Vakoc, Misha
Sent: Friday, October 09, 2015 10:57 AM
To: 'Day, Dustin'
Cc: Storm, Linda
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hi-

Do you also need information about EPA's 2012 *Construction General Permit for Indian Country within the State of Washington* (#WAR12000I)?

This NPDES permit addresses SW discharges during the active construction phase; it's EPA's permit comparable to the WA Dept of Ecology's *Construction Stormwater General Permit* (CSWGP) – here is the webpage:

<http://water.epa.gov/polwaste/npdes/stormwater/EPA-Construction-General-Permit.cfm>

Misha

From: Day, Dustin [mailto:Dustin.Day@abam.com]
Sent: Friday, October 09, 2015 10:43 AM
To: Vakoc, Misha
Cc: Storm, Linda
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hi Misha,

Thanks for looking into this further. Just to follow up from my previous email, the Tribe will be designing the on-site stormwater management in accordance with federal standards (i.e., 2012 Ecology Stormwater Manual), which is consistent with the project EIS and ROD. Let me know if you have any questions.

Thanks,
Dusty

From: Vakoc, Misha [mailto:Vakoc.Misha@epa.gov]
Sent: Wednesday, September 30, 2015 1:00 PM
To: Day, Dustin <Dustin.Day@abam.com>
Cc: Storm, Linda <Storm.Linda@epa.gov>
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hello again, Dustin:

With regard to the issue that *"The Tribe contends that through the NEPA process the County's stormwater manual that was in place when they started the process to put the land into trust with the Bureau of Indian Affairs was to be used. Is there something about the NEPA process that would allow them to use the manual that was documented in that process versus the 2012 manual?"*

I spoke with a colleague, Erik Peterson, in our NEPA group, and he referred me to the Council on Environmental Quality (CEQ) regulations for the NEPA program, at 40 CFR Part 1502.9(c)(1)(ii), which says: "Agencies shall prepare supplements to either draft or final EISs if ...there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." The full text of this regulation is available here: <https://www.law.cornell.edu/cfr/text/40/1502.9>

There is also a memorandum* used by the Agencies that has the force of guidance, that indicates any a final NEPA analysis is only valid/available for 5 years – after that time, a supplement should be added to address any changes in the interim. See: CEQ FAQ #32: <https://ceq.doe.gov/nepa/regs/40/30-40.HTM#32>

*The memo, entitled “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” 46 Fed. Reg. 18026 (March 23, 1981) As amended, is available in its entirety here: <http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>

The 2006 version of the Clark County stormwater management manual used during the initial design was subsequently updated at least once (in 2009), and the WDOE manual (that Clark County’s manual must be equivalent to) has been updated at least twice over the last 9 years.

I believe this situation meets the *significant new circumstances or information relevant to environmental concerns* and the project should be evaluated in light of the current requirements for stormwater management. Potentially there needn’t be any additional changes to the design; however I believe it would be important to determine that the onsite controls are sufficient to meet the current stormwater management performance standards.

Thanks,

Misha

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From: Vakoc, Misha
Sent: Tuesday, September 29, 2015 9:33 AM
To: 'Day, Dustin'
Cc: Storm, Linda
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Yes. For stormwater management at new development & redevelopment sites in federal-NPDES jurisdiction areas in Western Washington, EPA requires the use of the most current *Western Washington Stormwater Management Manual* as published by the Department of Ecology, or an approved equivalent document. (For example: the EPA’s NPDES municipal stormwater permit for Joint Base Lewis-McChord, issued in late 2014, requires site design/onsite stormwater management/flow control pursuant to the 2012 *Western Washington Stormwater Management Manual*. EPA’s similar & pending SW permit for the Navy facilities in Western WA will do the same.)

As far as the issue of “vesting” (as I believe it is called) – ie, complying with rules/specs in existence at the time an application process is begun- I need to check in with our NEPA folks here to investigate the answer. While I am familiar with the concept under State law here in WA, I don’t know that it is a component of the federal NEPA process. I will check with them this AM and get you an answer (or someone as a point of contact) as soon as I can today.

Misha

From: Day, Dustin [<mailto:Dustin.Day@abam.com>]
Sent: Tuesday, September 29, 2015 8:50 AM
To: Vakoc, Misha

Cc: Storm, Linda

Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hi Misha,

Thank you for your response. I am assuming this is for federal lands. Is that correct?

So a question was raised by the Tribe since my last email and I don't know if you can answer this or not, but maybe you or Linda know someone who can. The Tribe contends that through the NEPA process the County's stormwater manual that was in place when they started the process to put the land into trust with the Bureau of Indian Affairs was to be used.

Is there something about the NEPA process that would allow them to use the manual that was documented in that process versus the 2012 manual?

Thanks for your time and consideration,
Dusty

From: Vakoc, Misha [<mailto:Vakoc.Misha@epa.gov>]

Sent: Tuesday, September 29, 2015 8:36 AM

To: Storm, Linda <Storm.Linda@epa.gov>; Day, Dustin <Dustin.Day@abam.com>

Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hello Dustin:

EPA requires use of the WA Department of Ecology's *2012 Stormwater Management Manual for Western Washington, as amended 12/2014*.

Here is the WDOE webpage to download the manual: <https://fortress.wa.gov/ecy/publications/SummaryPages/1410055.html>. The minimum technical requirements for new development sites are contained in *Volume 1- Minimum Technical Requirements and Site Planning* – see Part 2.4 (*Applicability of the Minimum Requirements*) and other relevant sections of the document.

I've looked at the Clark County website;

<http://www.clark.wa.gov/environment/stormwater/management/code.html#Schedule>). It appears the County is planning the final public meeting on an updated *Clark County Stormwater Manual* in mid-October 2015, with final adoption in December, and effective date in early January. Their final County Manual must be ultimately approved by WDOE as consistent with the WDOE's *2012 Stormwater Management Manual for Western Washington, as amended 12/2014*.

- Given that slow moving transition, EPA does not recommend using any new development design specs from a previously approved SW Manual for Clark County; instead, please reference the *2012 Stormwater Management Manual for Western Washington, as amended 12/2014* for the new casino location.

(Note: There is a Clark County version of the *Western Washington Hydrology Model* available on the County's website, which might be helpful to you; here: <http://www.clark.wa.gov/environment/stormwater/index.html> (look in the green-shaded Related Information section, lower right hand corner of the webpage.)

I hope this information is helpful to you; if you have any questions please let me know.

Misha

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From: Storm, Linda
Sent: Friday, September 25, 2015 11:53 AM
To: Day, Dustin; Vakoc, Misha
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Oops! You can see how swamped I am, can't even remember the correct county! Hope Misha can help you
Best
Linda

From: Day, Dustin [<mailto:Dustin.Day@abam.com>]
Sent: Friday, September 25, 2015 11:21 AM
To: Storm, Linda; Vakoc, Misha
Subject: RE: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hi Misha,

Just for clarification, I believe the stormwater design meet the 2004 Clark County manual not Cowlitz County. I look forward to your response.

Thanks,
Dusty

From: Storm, Linda [<mailto:Storm.Linda@epa.gov>]
Sent: Friday, September 25, 2015 11:13 AM
To: Vakoc, Misha <Vakoc.Misha@epa.gov>
Cc: Day, Dustin <Dustin.Day@abam.com>
Subject: Link to the current NPDES Stormwater General Permit for Tribal Lands?

Hi Misha;

The Cowlitz Tribe is building a casino in Clark County and is in the process of getting their Nationwide Permit authorization from the Army Corps of Engineers. They will also need to receive 401 WQ Certifications from EPA and Ecology because portions of the work are on Tribal Trust Lands (EPA) and portions of the work are on state lands (Ecology). Dustin Day is their representative and needs to know what the NPDES Stormwater General Permit conditions and requirements arethey have designed their stormwater management at the site to meet a 2006 Cowlitz County manual (approved then by Ecology). They may or may not be required to update their design to meet the current Ecology manual....either way, he needs to know what the Federal requirements for NPDES are on Tribal lands.

Can you help? I searched for the permit and url and could not find it ☹

Thanks so much!
Linda



Linda E. Storm, Aquatic Ecologist

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